

Farm Service Agency, USDA

§ 761.55

§ 761.52 Deposits into a supervised bank account.

(a) Checks or money orders may be deposited into a supervised bank account provided they are not payable:

(1) Solely to the Federal Government or any agency thereof; or

(2) To the Treasury of the United States as a joint payee.

(b) Loan proceeds may be deposited electronically.

§ 761.53 Interest bearing accounts.

(a) A supervised bank account, if possible, will be established as an interest bearing deposit account provided that the funds will not be immediately disbursed, and the account is held jointly by the borrower and the Agency if this arrangement will benefit the borrower.

(b) Interest earned on a supervised bank account will be treated as normal income security.

§ 761.54 Withdrawals from a supervised bank account.

(a) The Agency will authorize a withdrawal from the supervised bank account for an approved purpose after ensuring that:

(1) Sufficient funds in the supervised bank account are available;

(2) No loan proceeds are disbursed prior to confirmation of proper lien position, except to pay for lien search if needed;

(3) No checks are issued to "cash;" and

(4) The use of funds is consistent with the current farm operating plan or other agreement with the Agency.

(b) A check must be signed by the borrower with countersignature of the Agency, except as provided in paragraph (c) of this section. All checks must bear the legend "countersigned, not as co-maker or endorser."

(c) The Agency will withdraw funds from a supervised bank account without borrower counter-signature only for the following purposes:

(1) For application on Agency indebtedness;

(2) To refund Agency loan funds;

(3) To protect the Agency's lien or security;

(4) To accomplish a purpose for which such advance was made; or

(5) In the case of a deceased borrower, to continue to pay necessary farm expenses to protect Agency security in conjunction with the borrower's estate.

§ 761.55 Closing a supervised bank account.

(a) If the supervised bank account is no longer needed and the loan account is not paid in full, the Agency will determine the source of the remaining funds in the supervised bank account. If the funds are determined to be:

(1) Loan funds:

(i) From any loan type, except Youth loan, and the balance is less than \$1,000, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(ii) From a Youth loan, and the balance is less than \$100, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(2) Loan funds:

(i) From any loan type, except Youth loan, and the balance is \$1,000 or greater, the Agency will apply the balance to the FLP loan;

(ii) From a Youth loan, and the balance is \$100 or greater, the Agency will apply the balance to the FLP loan;

(3) Normal income funds, the Agency will apply the balance to the remaining current year's scheduled payments and pay any remaining balance to the borrower; and

(4) Basic security funds, the Agency will apply the balance to the FLP loan as an extra payment or the borrower may apply the balance toward the purchase of basic security, provided the Agency obtains a lien on such security and its security position is not diminished.

(b) If the borrower is uncooperative in closing a supervised bank account, the Agency will make written demand to the financial institution for the balance and apply it in accordance with paragraph (a) of this section.

(c) In the event of a borrower's death, the Agency may:

(1) Apply the balance to the borrower's FLP loan;

(2) Continue with a remaining borrower, provided the supervised bank account was established as a joint tenancy with right of survivorship account;

(3) Refund unobligated balances from other creditors in the supervised bank account for specific operating purposes in accordance with any prior written agreement between the Agency and the deceased borrower; or

(4) Continue to pay expenses from the supervised bank account in conjunction with the borrower's estate.

§§ 761.56–761.100 [Reserved]

Subpart C—Supervised Credit

§ 761.101 Applicability.

This subpart applies to all direct applicants and borrowers, except borrowers with only Non-program loans.

§ 761.102 Borrower recordkeeping, reporting, and supervision.

(a) A borrower must maintain accurate records sufficient to make informed management decisions and to allow the Agency to render loan making and servicing decisions in accordance with Agency regulations. These records must include the following:

- (1) Production (e.g., total and per unit for livestock and crops);
- (2) Revenues, by source;
- (3) Other sources of funds, including borrowed funds;
- (4) Operating expenses;
- (5) Interest;
- (6) Family living expenses;
- (7) Profit and loss;
- (8) Tax-related information;
- (9) Capital expenses;
- (10) Outstanding debt; and
- (11) Debt repayment.

(b) A borrower also must agree in writing to:

- (1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;
- (2) Submit financial information and an updated farm operating plan when requested by the Agency;
- (3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance may adversely impact future requests for assistance.

§ 761.103 Farm assessment.

(a) The Agency, in collaboration with the applicant, will assess the farming operation to:

(1) Determine the applicant's financial condition, organizational structure, and management strengths and weaknesses;

(2) Identify and prioritize training and supervisory needs; and

(3) Develop a plan of supervision to assist the borrower in achieving financial viability and transitioning to private commercial credit or other sources of credit in the shortest time practicable, except for CL.

(b) The initial assessment must evaluate, at a minimum, the:

- (1) Farm organization and key personnel qualifications;
- (2) Type of farming operation;
- (3) Goals for the operation;
- (4) Adequacy of real estate, including facilities, to conduct the farming operation;
- (5) Adequacy of chattel property used to conduct the farming operation;
- (6) Historical performance, except for streamlined CL;
- (7) Farm operating plan;
- (8) Loan evaluation, except for streamlined CL;
- (9) Supervisory plan, except for streamlined CL;
- (10) Training plan; and
- (11) Graduation plan, except for CL.

(c) An assessment update must be prepared for each subsequent loan. The update must include a farm operating plan and any other items discussed in paragraph (b) of this section that have significantly changed since the initial assessment.

(d) The Agency reviews the assessment to determine a borrower's progress at least annually. The review will be in the form of an office visit, field visit, letter, phone conversation, or year-end analysis, as determined by the Agency. For streamlined CLs, the borrower must provide a current balance sheet and income tax records. Any